

Remarks

Claim rejections 35 USC § 102

Claims 48 and 49 are cancelled, rendering the rejection moot.

Claim rejections 35 USC § 103

Applicants respectfully submit that the invention of claim 1 is patentable over the suggested combination of prior art references because Schuster does not teach an “endpoint” having the features required by claim 1, and because neither Schuster nor McKee teaches any telecommunications session being in progress while the required test packets are being transmitted and monitored, as claim 1 also requires.

No disclosure of an endpoint as defined in the claims

The Examiner alleges that Schuster's source PC 166 can be equated with the endpoint recited in claim 1, and more particularly, that “source PC 166 is the endpoint enabling a user to participate in a telecommunication session with the destination 192 over the network, Fig. 3”. This statement contains two assumptions which cannot be supported.

Firstly, nothing in Schuster teaches the source PC 166 being used as a telecommunications device. The source PC 166 is used only to measure compliance with the service level agreements to which the ISP 168 has committed.

While it is true that a PC with suitable software could act as a telecommunications endpoint, no such software is mentioned in relation to the PC 166 to which the Examiner has referred, i.e. The PC is not mentioned as having the capability of acting as a telecommunications device.

At the filing date October, 2000, most PCs were not provided with voice over IP software so it cannot be implicit in the teaching of Schuster that such capabilities must have been provided by PC 166. For completeness, the other source PCs 30 and 110 are equally not suggested as telecommunications devices.

Secondly, the quoted statement above indicates that the source PC 166 can “participate in a telecommunication session with the destination 192”. Destination 192 is indicated to be an unused port or an echo port, and is not a participant in any telecommunications session. This further confirms that Schuster has not contemplated a telecommunications session between two points and in particular between the source PC 166 and the destination 192. These two entities are employed simply for this method of testing SLA compliance, according to the teaching of Schuster.

No disclosure of test transmission during telecommunications session involving endpoint

The Examiner argues that Schuster discloses both “transmitting test packets across the network” and also “monitoring transmission characteristics of said test packets”. However, this omits a fundamental feature of this transmission and monitoring. The independent claims specifically recite that the transmission of test packets across the network happens “while a telecommunications session including said telecommunications device is in progress”.

While the Examiner’s argument omits this feature from the recitation of what Schuster is alleged to disclose (correctly in applicants’ submission), the argument then fails to explicitly acknowledge this shortcoming of Schuster. More importantly, there is no indication of where McKee, or any other prior art reference, teaches the transmission of test packets while the user is participating in a telecommunications session involving said telecommunications device.

McKee teaches a network testing station which can be plugged in at various nodes in a network to carry out measurements and having a display of measured network performance. This is of course not a telecommunications device for participation by a user in a telecommunications session. Transmitting test packets with such a device does not create any “telecommunications session” between the device and another endpoint.

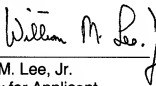
This feature is not present in any of the prior art relied on and therefore no combination of the documents can result in the skilled person being presented with this teaching.

Each of claims 2-11, 27-31, 33-36, 44-47 and 50-53 contains the features discussed above and for these reasons at least must be regarded as patentable over Schuster and McKee (and in the case of claims 5 and 6, the further combination of Vaid with Schuster and McKee).

In view of the amendments and arguments made herein, the applicants respectfully request the examiner withdraw the rejections, and allow the application.

January 31, 2007

Respectfully submitted,

A handwritten signature in black ink that reads "William M. Lee, Jr." with a stylized flourish at the end.

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